MONTANA LEGISLATIVE HISTORY

Chapter 182 1975

Bill H 551 S _____ Original bill & history ✓ C

H. Committee on Labor & Empl. Relations			S. Committee on Labor & Empl. Relations		
Hearing Date(s)	Feb 25	✓ C	Hearing Date(s)	Mar 10	✓ C
		C		Mar 12	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

House BILL NO. 551

INTRODUCED BY W. Barth

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE MONTANA SAFETY ACT; METAL AND NONMETALLIC MINE SAFETY LAWS; BOILER LAWS; PAYMENT OF SILICOSIS BENEFITS, AND THE OCCUPATIONAL DISEASE ACT; AMENDING SECTIONS 41-1709, 41-1713 THROUGH 41-1729, 41-1733, 50-101, 50-102, 50-108, 50-118, 50-119, 69-1501, 69-1503, 69-1507, 69-1509, 69-1510, 69-1512, 69-1513, 69-1514, 69-1515, 69-1517, 69-1601, 69-1602, 69-1604, 71-1001, 71-1002, 71-1005, 71-1006, 71-1007, 92-1302, 92-1303, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-1709, R.C.M. 1947, is amended to read as follows:

"41-1709. Definitions. Unless context requires otherwise, in this act:

(1) ~~"Board" means the industrial accident board of the state of Montana~~ "Division" means the division of workers' compensation of the department of labor and industry provided for in section 82A-1004.

(2) "Employer" is defined as in section ~~92-410~~ 92-410.1, R.C.M. 1947.

INTRODUCED BILL

(3) "Code" means a standard body of rules for safety formulated, adopted and issued by the ~~board~~ division under the provisions of this act.

(4) "Employee" and "~~workmen~~ worker" are defined as in section 92-411, R.C.M. 1947.

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

Section 2. Section 41-1713, R.C.M. 1947, is amended to read as follows:

"41-1713. ~~Board's~~ Division's powers ~~----duty--to establish-department-of-safety-under-a-safety--director~~ -- rule-making power -- subpoena and other powers. In the administration of this act the ~~board~~ division:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(2) Shall ~~establish--a-department-of-safety-under-the supervision-of-a-safety-director,-to--be--appointed--by--the board,--to~~ carry out the provisions of this act. The safety ~~director~~ bureau chief shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May ~~make,-establish,-promulgate~~ adopt and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the ~~board~~ division shall provide for defraying the expenses thereof."

Section 3. Section 41-1714, R.C.M. 1947, is amended to read as follows:

"41-1714. Compelling witnesses to appear in response to subpoena -- contempt. (1) The ~~board~~ division or any

member thereof, before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the ~~board~~ division.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why ~~he~~ the witness has not attended and testified or produced the papers before the ~~board~~ division or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the ~~board~~ division or member thereof, the court thereupon shall enter an order that the witness appear before the ~~board~~ division or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the

(3)

order the witness shall be dealt with as for contempt of court."

Section 4. Section 41-1715, R.C.M. 1947, is amended to read as follows:

"41-1715. ~~Board's~~ Division's power to prescribe safety devices and fix and order safety standards. The ~~board~~ division may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in

employments and places of employment may demand."

Section 5. Section 41-1716, R.C.M. 1947, is amended to read as follows:

"41-1716. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the ~~board~~ division shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the ~~board~~ division may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the ~~board~~ division after the hearing."

Section 6. Section 41-1717, R.C.M. 1947, is amended to read as follows:

"41-1717. Order directing additions, repairs, and improvements. Whenever the ~~board~~ division, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees

HB 551

in such employments and place of employment, the ~~board~~ division shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The ~~board~~ division may in the order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order."

Section 7. Section 41-1718, R.C.M. 1947, is amended to read as follows:

"41-1718. Notice of violation of safety code, order or rule -- penalties for violations -- hearings -- injunction authorized. (1) The ~~board--or--authorized--representative thereof-with--the--approval--of--the--board--or--the--safety director,~~ division upon finding any violation of any duly ~~promulgated~~ adopted safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling

attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the ~~board~~ division, or who fails or refuses to file a report of accident as required by section 92-808, R.C.M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars ($1,000). This civil penalty may be imposed and collected by the ~~board~~ division in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs ~~workmen~~ workers. Any penalty collected under this subsection shall be paid into

the industrial accident administrative earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the ~~board~~ division within twenty (20) days after entry of such order. The ~~board~~ division shall then affirm, modify or revoke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

(5) In addition to all other remedies provided in this act, the ~~board~~ division may bring an action to enjoin any violation of any duly ~~promulgated~~ adopted safety order, code or rule."

Section 8. Section 41-1719, R.C.M. 1947, is amended to read as follows:

"41-1719. Time allowed for compliance with order. The ~~board~~ division shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the ~~board~~ division for an extension of time, which the ~~board~~ division shall grant if it finds the extension of time necessary."

Section 9. Section 41-1720, R.C.M. 1947, is amended to read as follows:

"41-1720. Order of closure or for cessation of work

where place of employment an immediate menace to life or safety. The ~~board-or-authorized-representative-thereof,-with the-approval-of-the-board-or-the-safety--director,~~ division may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the ~~workmen~~ workers employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the ~~workmen~~ workers employed therein. Upon issuance of any such order, the ~~board-or-safety-director~~ division shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the ~~board~~ division. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the ~~board~~ division shall affirm, modify, or set aside the order. Nothing in this section shall empower the ~~safety-director~~ division to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those

HB 531

employments or places of employment for which no code has been adopted and where it is found by the ~~safety director~~ division that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the ~~workmen~~ workers there employed, the ~~safety director~~ division may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the ~~board~~ division."

Section 10. Section 41-1721, R.C.M. 1947, is amended to read as follows:

"41-1721. Judicial review of ~~board's~~ divisions orders, rules or decisions. (1) The orders of the ~~board~~ division, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order

or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the ~~board~~ division and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the ~~board~~ division. Within ten (10) days after the receipt of the notice, the ~~board~~ division shall file with the clerk of court the record of proceedings before the ~~board~~ division, including a transcript of all the evidence adduced upon the hearing and any rehearing before the ~~board~~ division. The district court, on application for good cause shown, may extend the time within which the ~~board~~ division shall file the record, transcript and evidence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the ~~board~~ division.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The ~~board~~ division acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases."

Section 11. Section 41-1722, R.C.M. 1947, is amended to read as follows:

"41-1722. Application for rehearing of order, decision, or rule of ~~board~~ division. Any party aggrieved directly or indirectly by any final order, decision or rule of the ~~board~~ division made or entered pursuant to this act may apply to the ~~board~~ division within twenty (20) days after the order of the ~~board~~ division for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act."

Section 12. Section 41-1723, R.C.M. 1947, is amended to read as follows:

"41-1723. Application for rehearing -- contents -- waiver -- copies to adverse parties -- procedure where no adverse parties. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which

the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the ~~board~~ division.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the ~~board~~ division may require the application for rehearing to be served on such parties as may be designated by the ~~board~~ division."

Section 13. Section 41-1724, R.C.M. 1947, is amended to read as follows:

"41-1724. Resolution of issues on rehearing -- notice -- disposition. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the ~~board~~ division, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the ~~board~~ division shall order a rehearing thereon and consider and determine the matters raised by such application.

HB551

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the ~~board~~ division may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the ~~board~~ division shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the ~~board~~ division shall abrogate, change or modify the same.

(4) An order or decision made after the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the ~~board~~ division.

(5) An application for rehearing is considered denied by the ~~board~~ division unless it has been acted upon within thirty (30) days from the date of filing; provided that the ~~board~~ division may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days."

Section 14. Section 41-1725, R.C.M. 1947, is amended

to read as follows:

"41-1725. Periodic inspections of hazardous places of employment -- report. (1) The ~~board~~ division shall inspect from time to time all the places of employment defined in the Montana ~~Workmen's~~ Workers' Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the ~~board~~ division and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the ~~board~~ division, or by the ~~board or a member of the board~~ division in the course of a hearing or in the course of a hearing or proceeding."

Section 15. Section 41-1726, R.C.M. 1947, is amended to read as follows:

"41-1726. ~~Workmen~~ Workers to notify employers of safety violations -- complaint to ~~board~~ division -- investigation. (1) A ~~workman~~ worker shall notify ~~his~~ the worker's employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the ~~workman~~ worker.

(2) If the employer fails to remedy the violation, the ~~workman~~ worker may complain in writing to the ~~board~~ division of the violation.

(3) Upon receiving the complaint the ~~board~~ division shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant."

Section 16. Section 41-1727, R.C.M. 1947, is amended to read as follows:

"41-1727. Code-making power. (1) ~~In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate~~ The division may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the ~~board~~ division may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for

administering worker safety programs, and other accepted codes. Any amendments made to such codes by the ~~board~~ division shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the ~~board~~ division may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the ~~board~~ division under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time."

Section 17. Section 41-1728, R.C.M. 1947, is amended to read as follows:

"41-1728. Variations. Any employer may consult with the ~~board~~ division for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of practical difficulties, the ~~board~~ division may grant variations from particular provisions of the code and permit the use of other or different devices or methods.~~,--provided,--however,--that~~ However, such variations shall be granted only when it is clear that the reasonable

HB 557

safety of the workers in ~~said~~ the plant or place of employment is not thereby endangered. In any case where the ~~board~~ division shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this act. A properly indexed record of all variations made shall be kept in the office of the ~~board~~ division and be open to public inspection."

Section 18. Section 41-1729, R.C.M. 1947, is amended to read as follows:

"41-1729. General research and review powers of ~~board~~ division -- power to appoint advisers. The ~~board~~ division may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media,

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisers who shall be compensated by the ~~board~~ division if necessary, and who shall assist the ~~board~~ division in establishing standards of safety. The ~~board~~ division may adopt and incorporate in its orders such safety

recommendations as it may receive from such advisers."

Section 19. Section 41-1733, R.C.M. 1947, is amended to read as follows:

"41-1733. Occupational health hazards. The ~~board~~ division shall report occupational health hazards discovered in its investigations and inspection of places of employment to the ~~state--board--of--health~~ department of health and environmental sciences and shall co-operate with the ~~state board-of--health~~ department of health and environmental sciences in carrying out its duties as specified in Title 69, chapter 42, R.C.M. 1947."

Section 20. Section 50-101, R.C.M. 1947, is amended to read as follows:

"50-101. Inspectors of metal and nonmetallic mines -- employment. The ~~industrial--accident board~~ division of workers' compensation shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this act and shall prescribe their powers, duties and responsibilities."

Section 21. Section 50-102, R.C.M. 1947, is amended to read as follows:

"50-102. Inspections and investigations -- access to mine -- order to close mine or abate violation -- notice -- hearing and review. (a) The ~~board~~ division is authorized at any time to cause to be made such inspections and

investigations as it shall deem necessary in surface and underground mines which are subject to this act (1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and (2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this act.

(b) For the purpose of making any inspection or investigation authorized by this act, authorized representatives of the ~~board~~ division shall have the right of entry to, upon, or through any mine which is subject to this act.

(c) If, upon any inspection of a mine which is subject to this act authorized representatives of the ~~board~~ division find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except the persons designated below, whose presence in such area is necessary to eliminate the danger

described in such order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary in the judgment of the operator of the mine, to eliminate the danger described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(d) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of such period of time as originally fixed or extended, the

 HB 551

authorized representative finds that such violation has not been totally abated, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation; thereupon, the ~~board~~ division shall make an order requiring the operator of such mine to cause all persons in such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(e) Findings and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard, and a

description of the area of the mine throughout which persons must be withdrawn and debarred.

(f) Each finding made and notice or order issued under this section shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing, and shall be signed by the person making them. A notice or order issued by an authorized representative pursuant to this section may be annulled, canceled, or revised by the authorized representative, and in case of a ~~board~~ division order, the ~~board~~ division may annul, cancel or revise the order.

(g) The order of the duly authorized representative of the ~~board~~ division shall remain in effect, but shall immediately be subject to review as provided in this act.

(h) An operator notified of an order made pursuant to section 50-102 (c) may apply to the ~~board~~ division for a hearing, revision, or annulment of such order. Whenever the ~~board~~ division after such a hearing upon complaint, or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but, if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings, revising or annulling

the order under review.

(i) An operator notified of an order made pursuant to section 50-102 (d) may apply to the ~~board~~ division for a hearing or revision of such order. If the ~~board~~ division finds that there was no violation, it shall make an order annulling the order under review. If the ~~board~~ division finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the ~~board~~ division finds that such violation was not totally abated, it shall make an order consistent with its findings.

(j) In view of the urgent need for prompt decisions of matters submitted to the ~~board~~ division under section 50-102, all actions which the ~~board~~ division or its authorized representatives are required to take under this section shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved."

Section 22. Section 50-108, R.C.M. 1947, is amended to read as follows:

"50-108. To what mines act is applicable. This act shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees,

agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the ~~board~~ division, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of ~~men~~ persons employed."

Section 23. Section 50-118, R.C.M. 1947, is amended to read as follows:

"50-118. Violation of the act -- penalties. (a) Whenever an operator (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the ~~board~~ division or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the ~~board~~ division to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the ~~board~~ division any information or report requested by the ~~board~~ division and which may reasonably be necessary to carry out the provisions of this act, a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction,

HB 551

restraining order, or other order, may be instituted by the ~~board~~ division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(b) Any person who knowingly (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the ~~board~~ division or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the ~~board~~ division to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or of an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the ~~board~~ division any information or report requested by the ~~board~~ division and which may reasonably be necessary to carry out the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be punished for each such offense by a fine of not less than one hundred dollars ($100), or more than three thousand dollars ($3,000), or by imprisonment in the county jail not exceeding six (6) months, or both. In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits

such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both."

Section 24. Section 50-119, R.C.M. 1947, is amended to read as follows:

"50-119. Definitions. "Authorized representative" means mine inspector or any other person employed or authorized by the ~~industrial--accident board~~ division to perform any and all duties under this act. ~~"Board"~~ "Division" means the ~~industrial-accident-board~~ division of workers' compensation of the state of Montana. "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession. "Employee" means every person in this state, including a contractor other than an "independent contractor," who is in the service of an employer as hereinafter defined in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise. "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or

implied, oral or written. "Inspector" means a person or persons employed by the ~~industrial accident board~~ division to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this act. "Mine" means any mine (or excavation) when clay, metallic ore, mineral, gypsum, or rock is dug or mined whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground. "Notice" means a written notice, work order or correction notice issued by an authorized representative of the ~~board~~ division, which notice specifies a violation(s) and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation(s). "Occupational Health" means any of those health conditions that occur as a result of employment in a mine. "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the ~~board~~ division, or any other determination or decision made by the ~~board~~ division."

Section 25. Section 69-1501, R.C.M. 1947, is amended to read as follows:

"69-1501. ~~Advisory----committee---------functions-----appointment-and-terms-of-members-----traveling--expenses----~~ Boiler rules and regulations -- state inspectors of boilers, appointment, term and compensation -- special boiler

inspectors. ~~(1)--There--is--hereby--created--to--advise--the industrial--accident-board-an-advisory-committee-which-shall hereafter-be-referred-to-as--the--committee,--consisting--of three--(3)--members--who-shall-be-appointed-by-the-governor, one-for-two-(2)-years,-one-for-three-(3)-years-and--one--for four--(4)-years.-At-the-expiration-of-their-respective-terms or-when-vacancies-occur-they-or-their-successors--identified with--the--same--interest-respectively-shall-be-appointed-by the-governor-for-terms-of-four--(4)--years--each.--Of--these appointed--members--one--(1)--shall-be-a-Montana-first-class steam-licensed-operating-engineer--of--boilers--employed--in that--capacity-at-the-time-of-his-appointment,-one-(1)-shall be--commissioned--by--the--national--board--of--boilers--and pressure--vessels--inspectors-and-shall-represent-the-boiler insurance-companies-licensed-to-do-business--in--the--state, and--one--(1)--shall--be--a--Montana-registered-professional mechanical-engineer.-The-committee-shall-elect--one--(1)--of its-members-as-chairman-and-shall-meet-whenever-required.~~

~~The-members-of-the-committee-shall-serve-without-salary but--shall-receive-actual-travel-expenses-in-the-same-manner as-other-state-officers.~~

~~The--committee--shall--act--in--a--technical---advisory capacity--to--the--industrial--accident--board--and~~ (1) The division of workers' compensation shall formulate definitions, rules and regulations for the safe

HB 551

construction, installation, operation, inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The ~~industrial--accident board~~ division shall appoint state inspectors of boilers and shall prescribe their duties, term of office and fix their compensation.

(3) In addition to the state boiler inspectors the ~~industrial--accident board~~ division shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and shall accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors."

Section 26. Section 69-1503, R.C.M. 1947, is amended to read as follows:

"69-1503. Inspection of boilers -- boiler

installations. (1) The inspector of boilers must inspect all boilers and steam generators before the same are used, and all persons who bring into this state, for operation in this state, any boiler or boilers must notify the ~~board~~ division stating the number and kind of boilers, and where they are to be located and operated in this state, and must secure from the ~~board~~ division a certificate of inspection before ~~said~~ boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Upon written application, longer inspection intervals may be authorized by the ~~board~~ division. Any owner, operator or user who opens a boiler or boilers between inspections for repair or other reasons must notify the ~~board~~ division of such action and such boiler or boilers shall at the discretion of the ~~board~~ division be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation. Any person failing to give notice to the ~~board~~ division as herein provided, or who operates such boilers without a certificate from the ~~board~~ division, shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense, or by imprisonment in the county jail for not less than thirty

(30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) When necessary, the boiler inspector shall subject boilers, except those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure shall not exceed one hundred fifty per cent (150%) of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3) New boiler installations. No boiler which does not conform to the rules ~~and regulations formulated~~ adopted by the ~~committee~~ division governing new construction and installation shall be installed and operated in this state after twelve (12) months from the date upon which the first

rules ~~and regulations~~ under this act pertaining to new construction and installation shall have become effective, unless the boiler is of special design or construction, and is not covered by the rules ~~and regulations~~, nor is in any way inconsistent with such rules ~~and regulations~~, in which case a special installation and operating permit may at its discretion be granted by the ~~committee~~ division."

Section 27. Section 69-1507, R.C.M. 1947, is amended to read as follows:

"69-1507. Duty of owner to permit inspection -- ~~board~~ division action -- costs and expenses. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same. In case the owner, operators, or manager of any boiler is notified by the inspector to have ~~said~~ the boiler ready for inspection on a certain day, and fails to have such boiler ready for inspection at such time, the inspector shall notify the ~~board~~ division to gain access to ~~said~~ the boiler. Any person failing to immediately comply with ~~board~~ division directed access to ~~said~~ the boiler shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. The owner, engineer or

HB 551

manager of any boiler who has refused access resulting in a ~~board~~ division order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended."

Section 28. Section 69-1509, R.C.M. 1947, is amended to read as follows:

"69-1509. Classification and licensing of engineers. (1) Engineers entrusted with the operation, care and management of steam or water boilers and steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery shall be divided into four classifications in accordance with the following:

(a) First-class engineers shall be licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam driven machinery with the exception of

traction and hoisting engines.

(b) Second-class engineers shall be licensed to operate steam boilers operating not in excess of two hundred fifty (250) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of three hundred seventy-five (375) pounds per square inch gauge pressure and four hundred fifty degrees Fahrenheit (450°F) temperature, and steam driven machinery not to exceed one hundred (100) horsepower per unit with the exception of traction and hoisting engines.

(c) Third-class engineers shall be licensed to operate steam boilers operating not in excess of one hundred (100) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of one hundred sixty (160) pounds per square inch gauge pressure and three hundred fifty degrees Fahrenheit (350°F) temperature.

(d) Low-pressure engineers shall be licensed to operate steam boilers operating not in excess of fifteen (15) pounds per square inch gauge pressure or water boilers operating not in excess of fifty (50) pounds per square inch gauge pressure and two hundred fifty degrees Fahrenheit (250°F) temperature.

(3) Each applicant for an engineer's license shall meet the following minimum requirements for the class of engineer's license for which application is being made. Each

applicant for any classification must be physically and mentally capable of performing the required duties for the class of engineer's license for which application is being made.

(a) Applicants for low-pressure engineer's license shall have no less than three (3) months' full-time experience in the actual operation of a boiler in this classification and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a low-pressure engineer's license.

(b) Applicants for third-class engineer's license shall have no less than six (6) months' full-time experience in the actual operation of a boiler in this classification, under an engineer holding a valid third-class or higher license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a third-class engineer's license.

(c) Applicants for second-class engineer's license shall have:

(1) No less than two (2) years' full-time experience in the actual operation of a boiler and steam driven machinery

in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license; or

(2) Hold a valid third-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license.

(d) Applicants for first-class engineer's license shall have:

(1) No less than three (3) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent

to operate a boiler or boilers and steam driven machinery in this classification, shall be granted a first-class engineer's license; or

(2) Hold a valid second-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license; or,

(3) Hold a valid third-class engineer's license and have no less than two (2) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license.

(e) Allowable exceptions or variances to the foregoing minimum requirements are as follows:

(1) Applicants for engineer's license in any classification holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the ~~board~~ division and is found to be competent to operate a boiler or boilers and steam driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification satisfactory to the ~~board~~ division, accumulated in United States military services or the merchant marine service may be accepted in lieu of the operating experience required for licensing of engineers in each of the foregoing classifications.

(3) Applicants with training in the actual operation of steam or water boilers and steam machinery who have been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other ~~board~~ division approved institution or training program in the classification for which he is applying may at the discretion of the ~~board~~ division be credited with a maximum of six (6) months' experience toward first, second, or third-class engineer's license.

(4) None of the licenses in this section above named shall entitle the holder thereof to operate a traction engine, but all persons who are entrusted with the care and management of traction engines, or boilers on wheels, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. Applicants for a traction engineer's license shall have no less than six (6) months' full-time experience in the operation of steam traction engines and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a traction engine shall be granted a traction engineer's license. The ~~board~~ division at its discretion may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment."

Section 29. Section 69-1510, R.C.M. 1947, is amended to read as follows:

"69-1510. Complaints and revocation of license. Whenever complaint is made against an engineer holding a license that he through negligence, want of skill, or

inattention to duty, permitted his boiler(s) to burn or otherwise become in bad condition, or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the ~~board~~ division to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of ~~said~~ the engineer."

Section 30. Section 69-1512, R.C.M. 1947, is amended to read as follows:

"69-1512. Fees for inspection or examination. (1) All fees for inspection are to be paid to the ~~industrial accident--board~~ division in accordance with the following schedule based on safety valve setting:

(a) Boilers with pressure under thirty (30) pounds per square inch $10

(b) Boilers with pressure from thirty (30) pounds to one hundred (100) pounds per square inch $15

(c) Boilers with pressure from one hundred (100) pounds to three hundred (300) pounds per square inch $20

(d) Boilers with pressure over three hundred (300) pounds per square inch $30

(e) Miniature boilers with pressure not in excess of one hundred (100) pounds per square inch $10

(f) Steam traction $ 5

(g) Operating certificate $ 4

In case of the failure of the owner, manager or person

HB 55

in charge of any boiler to pay such fee to the ~~industrial accident board~~ division, the ~~board~~ division shall initiate the necessary legal action to collect ~~said~~ the fee. Failure of any person to immediately abide with results of such ~~board~~ division action shall be deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2) Whenever, upon request of the owner or operator of any boiler it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law, in addition to the fees herein prescribed, shall be charged and collected by the ~~industrial accident board~~ division.

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(a) First class	$30
(b) Second class	$20
(c) Third class	$12
(d) Low pressure	$ 8
(e) Traction	$12
(f) Renewal of license	$ 4
(g) Replacement of lost certificate	$ 2

(4) Each application shall be accompanied by a payment equal to fifty per cent (50%) of the license fee for which application is being made; said payment shall be forfeited

in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

In case of the failure of any applicant to successfully pass an examination, forty-five (45) days must elapse before he can again be examined for license."

Section 31. Section 69-1513, R.C.M. 1947, is amended to read as follows:

"69-1513. Review of license rejection. If any person who has applied for a license under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within forty-five (45) days after the date of his rejection, in writing set forth the causes of his grievance and request a ~~board~~ division review. Such request must be addressed to the ~~board~~ division and shall be signed by the rejected applicant. Within two days after receiving such request, ~~it is the duty of the board to~~ the division shall notify the applicant in writing that on a certain day, which shall not be less than five nor more than thirty (30) days after the date the ~~board~~ division receives ~~said~~ the written request, the ~~committee~~ division shall review and evaluate the application. The applicant may appear in person at ~~said~~ the review if he so desires. At least two days before the day set for the review the applicant may designate in writing to the ~~board~~ division

the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review."

Section 32. Section 69-1514, R.C.M. 1947, is amended to read as follows:

"69-1514. ~~Board~~ Division decision. After ~~said~~ the review is completed, ~~and~~ if ~~a--majority--of~~ the ~~committee~~ division decides that ~~such~~ the applicant is entitled to the license he has applied for, the ~~board~~ division shall without delay issue a license accordingly, but if ~~a-majority-of~~ the ~~committee~~ division rejects the applicant, it is a final rejection, and he must not be granted another examination for the space of forty-five (45) days after such last rejection, when he may again apply as provided by section 69-1512."

Section 33. Section 69-1515, R.C.M. 1947, is amended to read as follows:

"69-1515. Boilers exempted from provisions -- duty of owner of traction engine -- notice of purchase of boiler. (1) This act shall not apply to boilers under federal control. The provisions of this act requiring inspections, inspection fees and certificates shall not apply to steam heating boilers operated at not over fifteen (15) pounds per square inch gauge pressure in private residences or

apartments of six (6) or less families or to hot water heating or supply boilers operated at not over fifty (50) pounds per square inch gauge pressure and temperatures not over two hundred fifty degrees Fahrenheit (250° F) when in private residences or apartments of six (6) or less families. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. No persons operating any of the engines or boilers hereinbefore exempted from the operation of this article shall be required to procure license from the ~~board~~ division.

(2) Any person purchasing any boiler whether traction or stationary shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the ~~board~~ division and shall notify

the ~~board~~ division as to where ~~said~~ the boiler will be installed and operated. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other boilers and steam engines, except as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license."

Section 34. Section 69-1517, R.C.M. 1947, is amended to read as follows:

"69-1517. Operation of boiler or steam engine without license. It is unlawful for any person in this state to operate a stationary boiler or steam engine, or any boiler or steam engine other than engines and boilers exempted by the provisions of section 69-1515, without a license granted under the provisions of this article. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may, for fifteen days employ any person of the age of eighteen years or over whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the ~~board~~ division. The person so employing

the unlicensed engineer shall immediately notify the ~~board~~ division. But no owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act."

Section 35. Section 69-1601, R.C.M. 1947, is amended to read as follows:

"69-1601. Operators of hoisting engines must procure licenses. (1) It shall be unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel in industrial operations or on construction projects, or any air compressor operated by any power without first obtaining a license therefor from the ~~board~~ division as herein provided. Except that in emergencies the provisions of section 69-1517 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of one hundred (100) brake horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects."

Section 36. Section 69-1602, R.C.M. 1947, is amended to read as follows:

"69-1602. Application and fee for license -- renewal and revocation of license. Application for such licenses shall be made to the ~~board~~ division in the same manner, and the same fee shall be charged therefor as now required by law for obtaining a license to operate steam engines and boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines or boilers; provided, that the ~~board~~ division shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which the ~~board~~ division could revoke a license to operate steam engines and boilers."

Section 37. Section 69-1604, R.C.M. 1947, is amended to read as follows:

"69-1604. First and second-class licenses -- qualifications of applicant. (1) Each applicant for a hoisting engineer's license shall meet the following minimum

requirements for the class of license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of license for which application is being made.

(a) Applicants for second-class hoisting engineer's license shall have no less than two years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid second-class or first-class license and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a second-class hoisting engineer's license.

(b) Applicants for first-class hoisting engineer's license shall:

(1) Have no less than three years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license; or

(2) Hold a valid second-class license and have no less than six (6) months' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license.

(c) Applicants for first or second-class hoisting engineer's license holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the ~~board~~ division and is found to be competent to operate hoisting machinery in that classification shall be granted a license in that classification.

(d) Applicants for first or second-class hoisting engineer's license holding a valid first or second-class engineer's license for the operation of boilers, steam machinery and hoisting engines for the state of Montana prior to enactment of this act shall, upon application during a period not to exceed twelve (12) months after enactment of this act, be granted a hoisting engineer's

license in that classification."

Section 38. Section 71-1001, R.C.M. 1947, is amended to read as follows:

"71-1001. Definitions. (a) "Payments" means money payments to persons having silicosis as herein defined.

(b) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

(c) "Examining board" shall mean well-qualified physician or physicians, as designated by the ~~industrial accident board~~ division of workers' compensation."

Section 39. Section 71-1002, R.C.M. 1947, is amended to read as follows:

"71-1002. Administration. ~~(a) The industrial accident board of the state of Montana is hereby authorized and charged with the general supervision of this chapter under the powers, duties and functions as prescribed herein as amended.~~ The division of workers' compensation shall administer this chapter. The division shall:

~~All powers, duties and functions previously vested in the state department of public welfare in relation to this chapter are hereby transferred to the industrial accident board of the state of Montana.~~

~~(b) Any powers, duties or functions previously vested in the county departments of public welfare in relation to this chapter are hereby transferred to the industrial~~

~~accident-board-of-the-state-of-Montana.~~

~~(c)~~ (1) ~~The industrial accident board of the state of Montana shall formulate~~ Formulate a plan and ~~promulgate regulations~~ adopt rules for the operation of this chapter.

~~(f)~~ (2) ~~The industrial accident board shall co-operate~~ Cooperate with the federal government in all matters of immediate concern pertaining to silicosis.

~~(g)~~ (3) ~~The industrial accident board shall publish~~ Publish an annual report and interim reports as may be necessary or required or asked for by the governor.

~~(i)~~ (4) ~~The industrial accident board shall designate~~ Designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant.

~~(j)~~ (5) ~~The industrial accident board shall designate~~ Designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter.

~~(k)~~ (6) ~~The industrial accident board shall pay~~ Pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from fund appropriated to the ~~board~~ division for that purpose.

~~(l)~~ (7) ~~The industrial accident board shall develop~~ Develop and co-operate with other agencies in developing measures for the prevention of silicosis."

Section 40. Section 71-1005, R.C.M. 1947, is amended to read as follows:

"71-1005. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the ~~industrial accident board~~ division. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the ~~industrial accident board~~ division. The application form may be filled in and written by a person authorized by the ~~industrial accident board~~ division. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used."

Section 41. Section 71-1006, R.C.M. 1947, is amended to read as follows:

"71-1006. Investigation of applications. Whenever the ~~industrial accident board~~ division under this chapter receives an application for a payment an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provision of this chapter, and such other information as may be required by the rules of the ~~industrial accident board~~ division. The investigation of such applicant shall be conducted by representatives of the ~~industrial accident board~~ division. The physicians or physician designated by

HB 551

the ~~industrial-accident-board~~ division as herein provided shall constitute an examining board for such clinical, pathological, X-ray and Roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report."

Section 42. Section 71-1007, R.C.M. 1947, is amended to read as follows:

"71-1007. Making payments. Upon the completion of such investigation the ~~industrial-accident-board~~ division shall determine whether or not the applicant is entitled to a payment under this chapter. The ~~board~~ division shall then notify the applicant of its decision."

Section 43. Section 92-1302, R.C.M. 1947, is amended to read as follows:

"92-1302. Administration of act. This act shall be administered by the ~~industrial-accident-board-of--the--state of-Montana~~ division of workers' compensation. ~~The-members-of the--industrial--accident-board--shall-receive-no-additional compensation-for-administering--this--act.--The--actual--and necessary--traveling--expenses--of--the-members-of-the-board while-on-business-of-administering-this-act--shall--be--paid from--the--occupational--disease-compensation-account-in-the agency-fund.~~

Section 44. Section 92-1303, R.C.M. 1947, is amended to read as follows:

"92-1303. Definitions. Except as in this section and elsewhere in this act expressly set forth, the definitions contained in the ~~Workmen's~~ Workers' Compensation Act shall apply to terms and words herein contained.

~~(1).~~ (1) "Weekly wage" means the average of the weekly earnings of the employee in the employ of his employer against whom compensation is awarded during the period of one year prior to the termination of his employment with such employer, or during such lesser period in such year as ~~he~~ the employee has been in the employ of his employer. In case the employee is absent from employment during the period as a result of the occupational disease for which compensation is claimed, then the week or weeks in which the absence occurs shall not be included in the computation of the average weekly wage. If the period provided in this section for computation of the average weekly wage does not include four weeks, then the average weekly wage shall be such as, having regard to the previous wage of the employee, or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the weekly earning capacity of the disabled employee in the employment

in which he is working at the time of his disablement.

~~2.~~ (2) "Award" means the finding or decision of the ~~board~~ division as to the amount of compensation due any disabled employee or the dependents of any deceased employee.

~~3.~~ (3) ~~"Board" means the industrial accident board of the state of Montana~~ "Division" or board means the division of workers' compensation provided for in section 82A-1004.

~~4.~~ (4) "Compensation" means the payments and benefits provided in this act.

~~5.~~ (5) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from performing any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability." Provided that in the event of death or disability due to pneumoconiosis the following shall apply:

~~a.~~ (a) If a miner who is suffering or has suffered from pneumoconiosis was employed for ten (10) years or more in one (1) or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such

employment.

~~b.~~ (b) If a deceased miner was employed for ten (10) years or more in one (1) or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis.

~~c.~~ (c) If a miner is suffering or suffered from a chronic dust disease of the lung which (1) when diagnosed by chest roentgenogram yields one (1) or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization, (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (3) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in clause (1) or (2) if diagnosis had been made in the manner prescribed in clause (1) or (2) then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

~~6.~~ (6) The terms "employee," "workman," and "operative," as used herein, shall mean:

Every person in the service of the state, and of a county, city, town, municipal corporation, or school district, including the regular members of lawfully

HB 657

constituted police and fire departments of cities and towns.

Every person in the service of any employer subject to this act as hereinafter defined or to whom such employer is required to secure compensation under this act, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and is not in the usual course of trade, business, or occupation of the employer, and not including agricultural workers and domestic servants unless the employer shall so elect.

~~7.~~--(7) "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years, or if no surviving wife or husband then a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of disablement.

~~8.~~(8) "Major dependent" means if there be no beneficiary as defined in a preceding section, the father or mother, or the survivor of them, if actually dependent upon the decedent at the time of his disablement, then to the

extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

~~9.~~---(9) "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding section the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of ~~his~~ the decedent's disablement. Minor dependents shall be awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

~~10.~~--(10) "Invalid" means one who is physically or mentally incapacitated.

~~11.~~-(11) "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the disablement, an illegitimate child legitimized prior to the disablement.

~~12.~~-(12) "Week" means six (6) working days, but includes Sundays.

~~13.~~-(13) "Wages" means the average daily wages received by the employee at the time of the disablement for the usual hours of employment in a day, and overtime is not to be considered.

~~14.~~-(14) "Wife" or "widow" means only a wife or widow living with, or legally entitled to be supported by the

deceased at the time of the disablement.

~~15.~~ (15) "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her disablement.

~~16. "Commissioner" means one (1) of the members of the industrial accident board.~~

~~17. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.~~

~~18.~~ (16) "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the ~~board~~ division, or any other determination arrived at or decision made by such ~~board~~ division, excepting general or local orders as herein specified.

~~19.~~ (17) "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve (12) times the average monthly payroll for the current year; provided, that an estimate may be made by the ~~board~~ division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the ~~board~~ division, as the case may actually be on December 31st of such current

year.

~~20.~~ (18) "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth (30th) day of the succeeding June.

~~21.~~ (19) "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

~~22.~~ (20) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

~~23.~~ (21) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice ~~his profession~~ in this state.

~~24. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.~~

~~25. Wherever the masculine gender is used, the feminine and neuter shall be included.~~

~~26.~~ (22) For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic X-ray pattern, and by variable clinical manifestations.

HB 551

32

~~25.~~ (23) For the purpose of this act "pneumoconiosis" is defined as a chronic dust disease of the lung arising out of employment in coal mines, and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

~~27.~~ (24) "Workshift" means the work for which an employee is paid a day's wages."

~~28. "Workmen's Compensation Act" means the Workmen's Compensation Act of the state of Montana.~~

-End-

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE & SAFETY
HOUSE OF REPRESENTATIVES
February 25, 1975

A meeting of the Public Health, Welfare & Safety Committee was held on Tuesday, the above date, at 10:30 a.m. in Room 108 of the Capitol Building. All members were present.

The following bills were heard in this order: HB 657
HB 649
HB 551
HB 490
HB 691
HB 640
HJR 50

HB 657--COSPONSOR: Rep. David Aageson, district 9, said this bill would disallow any consumption of alcoholic beverages in a car on a public highway and provide penalties. He said there were city ordinances of this type. Rep. Harrison Fagg asked if this would include rest stops, and Aageson replied that it would only apply if a person was drinking in his car. Rep. Martha Herlevi said that this law had one shortcoming in that a driver could pass his drink to the passenger and not be penalized. Aageson replied that this law would make the driver responsible for any open receptacle of alcohol in the car.

HB 649--SPONSOR: Rep. Gary N. Kimble, district 94, said this bill would appropriate $42,000 to the University of Montana for a radio, talking book service for the print handicapped. He said that the University radio station, KUFM, would allow utilization of their sub-carrier. This sub-carrier is often used in stores as background music. The program would be received by the handicapped only, but the special transmitter is needed. KUFM has all the needed equipment and has received pledges to start the program. Philip Hess, KUFM, displayed a sample of the radio that would be used. He said this would be a personal radio service to a particular audience, broadcasting news, advertisements, debates, discussions, legislative action, or such news not already available. Most national news would not be transmitted. He said they would like to start this as a pilot program and continue from there. Only those certified will be able to provide the service. The program will not be restricted to the blind but will include other handicapped (loss of use of hands, stroke, cerebral palsy, extreme arthritis, etc.). George Cole, Helena, said that the program from Spokane's KBBX-FM has proved invaluable for the visually and physically handicapped.

Opponent, James Sibert, Association of the Blind, did not feel that the program made a good enough coverage for the money involved. Virginia Sutich, Sand Coulee, did not feel it covered a large enough segment of the population to justify its expenditure.

In closing, Kimble said that this program would not reduce any funds received by other programs. Holmes said that no funds are yet available from the federal government, but matching funds may be available in the future.

HB 551--SPONSOR: Rep. William R. Baeth, district 21, introduced Norm Grosfield, Administrator, Workmen's Compensation Division (WCD), who said this was just a clean-up bill and makes no substantive changes. This is a follow-up to the 1971 Executive Reorganization Act and a mere reflection of HB 22.

HB 490--SPONSOR: Rep. James Moore, district 18, said he has had enough experience in this field to see unjust acts on claimants in WCD cases, in particular, where the language used helped to defeat the claim. He felt that the 500-week limitation on partial disability benefits was arbitrary and was not related to the injury at all. Last year, this limitation was removed for permanent total disability, and he said he would like it removed for partial disability. He said that a partial injury may be only 30 percent disabling, but it is still permanent. After 500 weeks this person has no coverage whether he is 20 years old or 70 years old. Moore said that even though this would cause come rise in insurance premiums, the compensation should follow the actual disability. This would not open the liability to total coverage; about ten percent of the people would need benefits for more than 500 weeks. Most of the people injured work in dangerous positions and cannot earn a salary doing anything else.

Opponent George Wood, Montana Self-Insurers Association, made the following points against the bill: (1) It makes no provisions for tort or fault rights; (2) It would increase their costs 6 percent for each payment above the 500-week limitation; and (3) This constitutes piecemeal legislation by only removing requirements for unscheduled injuries; (4) It causes an imbalance between scheduled and unscheduled injuries; and (5) It would increase payments for partial disability far exceeding payments for permanent disability. He requested that this bill be killed in lieu of a study by the Governor's Advisory Council.
Opponent Bill Sternhagen, Anaconda Company, said that as a Plan 1 Employer, he felt this would increase their costs substantially and would curtail production. He felt they should base laws on cutting costs instead of increasing them.

In closing, Moore said that, pertaining to tort liabilities, a worker is in no way made whole again. All the bill asks is that the compensation follow the disability. It does not authorize a person who is not actually disabled to collect, but compensates that person who has an actual impairment.

Rep. Rasmussen asked if they use vocational rehabilitation, and Moore said they encourage workers to become involved in this program. Babcock asked if he felt that there should be a limit on the claim, and Moore said yes, if, in fact, the disability affects their earning capacity. In rebuttal, Wood said that they should determine the award on the disability or the loss of earning capacity and should not marry the two. He felt this was a "windfall" legislation for attorneys.

of certain privileges just because of ignorance of their rights; (3) the patient's right to psychiatric help; and (4) the right to an adequate staff. He said th.. he favored the idea, and that it did not matter if he was contracted through the legislature or through legal services. Jane Edwards, director, nursing service, Warm Springs, said that they do realize that patients have these problems, and that legal counsel is difficult to obtain. Les Slette and Archie McPhail, Warm Springs, supported the bills. Mr. McPhail said this is needed for the under privileged patients and the children.

In closing, Murphy asked for favorable consideration of HJR 50 so that problems of HB 640 could be worked out over the interim, since this is a freshman step. Lynch pointed out that they are asking that this attorney be paid the same as the Attorney General. When questioned, Ms. Edwards said she would object to taking funds from the Warm Springs budget to fund this program, but she said that their departments would take care of time cards and wages for these people, and purchasing office items.

There being no further testimony, the committee went into executive discussion.

HB 649--Rep. Gould explained that the Blind Association opposed the bill because they were afraid the $42,000 requested to cover western Montana would eventually take away from the blind in the eastern part of the state. Gould said he was non-committal, but would like to see this program function on a state-wide basis.

LYNCH MOVED DO PASS UNDER THE STIPULATION THAT IT GO TO APPROPRITIONS. MOTION CARRIED WITH REP. FAGG OPPOSING.

HB 657--REP. GOULD MOVED DO NOT PASS. SECONDED BY REP. HERLEVI.

REP. McFADDEN MOVED SUBSTITUTE MOTION, DO PASS. MOTION FAILED WITH REP. HOLMES, REP. HARPER, AND REP. McFADDEN IN FAVOR AND REPS. MENAHAN, BABCOCK, DUSSAULT, FINLEY, LESTER, LYNCH, FAGG, GOULD, HERLEVI, MURPHY, PALMER, RASMUSSEN, AND ANDERSON OPPOSED.

ORIGINAL MOTION, DO NOT PASS, CARRIED WITH HOLMES, HARPER AND McFADDEN OPPOSING.

HB 551--BABCOCK MOVED DO PASS. SECONDED BY REP. HERLEVI. MOTION CARRIED UNANIMOUSLY.

HB 490--REP. FINLEY MOVED DO PASS. SECONDED BY MURPHY. MOTION CARRIED WITH BABCOCK AND RASMUSSEN OPPOSING.

HB 676--REP. FINLEY MOVED DO PASS. SECONDED BY MURPHY. MOTION CARRIED WITH REP. BABCOCK OPPOSING.

HB 691--REP. FINLEY MOVED DO PASS. SECONDED BY MURPHY. MOTION CARRIED WITH BABCOCK AND RASMUSSEN OPPOSING.

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 10, 1975

The twenty-second meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROLL CALL: All members present.

CONSIDERATION OF HOUSE BILL 551: An act for the codification and general revision of the laws relating to the Montana Safety Act; metal and non metallic mine safety laws; boiler laws; payment of silicosis benefits, and the occupational disease act.

Representative Baeth, sponsor of the bill, appeared before the committee to introduce this bill. He then stated that Norman Grosfield could explain the bill.

Norman Grosfield, Administrator of the Workmens Compensation Division, appeared in support of this bill. This is a companion bill to HB 22. It changes the name of the Industrial Accident Board to the Division of Workmen's Compensation. It also changes some minor language. There are no substantial changes.

Discussion was then held by the committee.

CONSIDERATION OF HOUSE BILL 173: An act to amend several sections by changing the word "Commission" to the word "Division"; by adding definitions; by substituting the words "Board of Labor Appeals" in conformity with the Excutive Reorganization Act of 1971; and the repealing of certain sections.

Representative Federico, appeared before the committee as the sponsor of this bill. This bill merely changes the word commission to division, to conform with the Executive Reorgainzation Act.

Discussion was then held by the committee.

CONSIDERATION OF HOUSE BILL 95: An act to cover all public employees under the Unemployment Compensation Laws.

Representative Magone, sponsor of this bill, appeared before the committee to introduce this bill. He turned the testimony over to Don Judge.

Don Judge, AFSCME, AFL-CIO, appeared before the committee in support of HB 95. This is a composite bill made up of HB 75 by incorporating some of the language into HB 95. This is necessary legislation to assure that all public employees afford the same benefits. Most public employees have not been covered. (See attached testimony.)

Fred Barrett, of the Employment Security Divison, appeared before the committee in support of HB 95. Mr. Barrett suggested some amendments to clean up the language. (See attached.)

Mr. Vincent Bosh submitted testimony so as to go on record as being in support of HB 95. (See attached.)

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 12, 1975

The twenty-fourth meeting of the Labor and Employment Relations ittee was called to order by Chairman Lee on the above date in 402 of the State Capitol Building at 4:00 p.m.

ROLL CALL: All members present with Senator Smith and Senator lbaker excused.

DISPOSITION OF HOUSE BILL 95: Senator Blaylock moved that HB 95 ONCURRED IN. Motion carried unanimously with Senator Hazelbaker Senator Smith excused.

DISPOSITION OF HOUSE BILL 173: Senator Mehrens moved that HB 173 ONCURRED IN. Motion carried unanimously with Senator Hazelbaker Senator Smith excused.

DISPOSITION OF HOUSE BILL 551: Senator Etchart moved that HB551 ONCURRED IN. Motion carried unanimously with Senator Hazelbaker Senator Smith excused.

DISPOSITION OF HOUSE BILL 632: Senator Olson moved that HB 632 OT CONCURRED IN. Motion carried unanimously with Senator Hazelbaker Senator Smith excused.

FURTHER CONSIDERATION OF HB 648: Chairman Lee stated that action B 648 should be done at a later date.

DISPOSITION OF HOUSE BILL 293: Senator Norman stated that the ommittee that studied this bill along with HB 451, 452, and 481 mmends they be concurred in. At this point Senator Norman moved HB 293 BE CONCURRED IN. Motion carried with Senator Hazelbaker sed and Senator Etchart opposed.

DISPOSITION OF HOUSE BILL 451: Senator Norman moved to adopt the dment to provide an effective date and that HB 451 AS SO AMENDED, ONCURRED IN. Motion carried unanimously with Senator Hazelbaker sed.

DISPOSITION OF HOUSE BILL 452: Senator Norman moved to adopt amendment to provide an effective date and that HB 452 AS SO AMENDED, ONCURRED IN. Motion carried unanimously with Senator Hazelbaker sed.

FURTHER CONSIDERATION OF HOUSE BILL 481: It was decided by the ittee that they would wait to act on HB 481.

DISPOSITION OF HOUSE BILL 458: Senator Blaylock moved that HB BE CONCURRED IN. Motion carried unanimously with Senator Smith Senator Hazelbaker excused.

FURTHER CONSIDERATION OF HOUSE BILL 450: The committee decided to act on HB 450 until a later date.

STANDING COMMITTEE REPORT

March 13, 19 75

PRESIDENT

your committee on LABOR AND EMPLOYMENT RELATIONS

ad under consideration HOUSE Bill No. 551

rfully report as follows: That HOUSE Bill No. 551

CONCURRED IN

Robert E. Lee, Chairman.

STATE PUB. CO.
Helena, Mont.

39

HOUSE BILL NO. 551

INTRODUCED BY W. BAETH

A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE MONTANA SAFETY ACT; METAL AND NONMETALLIC MINE SAFETY LAWS; BOILER LAWS; PAYMENT OF SILICOSIS BENEFITS, AND THE OCCUPATIONAL DISEASE ACT; AMENDING SECTIONS 41-1709, 41-1713 THROUGH 41-1729, 41-1733, 50-101, 50-102, 50-108, 50-118, 50-119, 69-1501, 69-1503, 69-1507, 69-1509, 69-1510, 69-1512, 69-1513, 69-1514, 69-1515, 69-1517, 69-1601, 69-1602, 69-1604, 71-1001, 71-1002, 71-1005, 71-1006, 71-1007, 92-1302, 92-1303, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-1709, R.C.M. 1947, is amended to read as follows:

"41-1709. Definitions. Unless context requires otherwise, in this act:

(1) ~~"Board" means the industrial accident board of the state of Montana~~ "Division" means the division of workers' compensation of the department of labor and industry provided for in section 82A-1004.

(2) "Employer" is defined as in section ~~92-410~~ 92-410.1, R.C.M. 1947.

REFERENCE BILL

(3) "Code" means a standard body of rules for safety formulated, adopted and issued by the ~~board~~ division under the provisions of this act.

(4) "Employee" and "~~workman~~ worker" are defined as in section 92-411, R.C.M. 1947.

(5) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change."

Section 2. Section 41-1713, R.C.M. 1947, is amended to read as follows:

"41-1713. ~~Board's~~ Division's powers ~~duty to establish department of safety under a safety director~~ rule-making power subpoena and other powers. In the administration of this act the ~~board~~ division:

(1) Is vested with full power and jurisdiction over, and shall have such supervision of, every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment.

(4) Shall ~~establish a department of safety under the supervision of a safety director, to be appointed by the board, to~~ carry out the provisions of this act. The safety ~~director~~ bureau chief shall be a person with at least two (2) years' experience or training in the field of industrial safety.

(3) May ~~make, establish, promulgate~~ adopt and enforce all necessary and reasonable rules and provisions for the purpose of carrying this act into effect and in reference to the investigation of all violations of this act and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this act into effect.

(4) May on its own motion or at the request of others, subpoena witnesses, administer oaths, take depositions and fix the fees and mileage of witnesses and compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of this state, and the ~~board~~ division shall provide for defraying the expenses thereof."

Section 3. Section 41-1714, R.C.M. 1947, is amended to read as follows:

"41-1714. Compelling witnesses to appear in response to subpoena -- contempt. (1) The ~~board~~ division or any

member thereof, before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding, and ask the court to compel the witness to attend and testify or produce such papers before the ~~board~~ division.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why ~~he~~ the witness has not attended and testified or produced the papers before the ~~board~~ division or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the ~~board~~ division or member thereof, the court thereupon shall enter an order that the witness appear before the ~~board~~ division or member thereof at a time and place to be fixed in such order, and testify and produce the required papers and upon failure to obey the

order the witness shall be dealt with as for contempt of court."

Section 4. Section 41-1715, R.C.M. 1947, is amended to read as follows:

"41-1715. ~~board's~~ Division's power to prescribe safety devices and fix and order safety standards. The ~~board~~ division may, after hearing had upon its own motion or upon complaint, by safety orders, rules or otherwise:

(1) Declare and prescribe what safety devices, safeguards or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law.

(2) Fix reasonable standards and prescribe, modify and enforce such reasonable orders for the adoption, installation, use, maintenance and operation of safety devices, safeguards and other means or methods of protection, to be as nearly uniform as possible, as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment.

(3) Fix and order such reasonable standards for the construction, repair and maintenance of places of employment and equipment as shall render them safe.

(4) Require the performance of any other act which the protection of the life and safety of employees in

employments and places of employment may demand."

Section 5. Section 41-1716, R.C.M. 1947, is amended to read as follows:

"41-1716. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes, as authorized in this act, the ~~board~~ division shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the ~~board~~ division may deem expedient. The notice shall contain a brief statement of the time, place and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the ~~board~~ division after the hearing."

Section 6. Section 41-1717, R.C.M. 1947, is amended to read as follows:

"41-1717. Order directing additions, repairs, and improvements. Whenever the ~~board~~ division, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe, or that the practices or methods or operations or processes employed or used in connection therewith are unsafe, or do not afford adequate protection to the life and safety of the employees

in such employments and place of employment, the ~~board~~ division shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment. The ~~board~~ division may in the order direct that such additions, repairs, improvements or changes be made and such safety devices and safeguards be furnished, provided and used, as are reasonably required to render such employment or places of employment safe, in the manner and within the time specified in the order."

Section 7. Section 41-1718, R.C.M. 1947, is amended to read as follows:

"41-1718. Notice of violation of safety code, order or rule -- penalties for violations -- hearings -- injunction authorized. (1) The ~~board or authorized representative thereof with the approval of the board or the safety director,~~ division upon finding any violation of any duly ~~promulgated~~ adopted safety code, order or rule involving failure to install or maintain any safety appliance, device or safeguard required by such safety order, code or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation, and when such use is prohibited shall post notice in an appropriate place in plain view of any person likely to use the same calling

attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided, or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the ~~board~~ division, or who fails or refuses to file a report of accident as required by section 92-808, R.C.M. 1947, is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than one thousand dollars ($1,000). This civil penalty may be imposed and collected by the ~~board~~ division in an action brought in the name of the state of Montana in the county in which the employer resides or in which he employs ~~workmen~~ workers. Any penalty collected under this subsection shall be paid into

43

the industrial accident administrative earmarked revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus or place of employment as provided for in this section may request a hearing before the ~~board~~ division within twenty (20) days after entry of such order. The ~~board~~ division shall then affirm, modify or revoke the order and all procedures of this act relative to entry of orders, rehearing and appeal shall apply.

(5) In addition to all other remedies provided in this act, the ~~board~~ division may bring an action to enjoin any violation of any duly ~~promulgated~~ adopted safety order, code or rule."

Section 8. Section 41-1719, R.C.M. 1947, is amended to read as follows:

"41-1719. Time allowed for compliance with order. The ~~board~~ division shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the ~~board~~ division for an extension of time, which the ~~board~~ division shall grant if it finds the extension of time necessary."

Section 9. Section 41-1720, R.C.M. 1947, is amended to read as follows:

"41-1720. Order of closure or for cessation of work

where place of employment an immediate menace to life or safety. The ~~board or authorized representative thereof, with the approval of the board or the safety director,~~ division may order any place of employment closed, or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the ~~workmen~~ workers employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the ~~workmen~~ workers employed therein. Upon issuance of any such order, the ~~board or safety director~~ division shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the ~~board~~ division. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment thereof, the ~~board~~ division shall affirm, modify, or set aside the order. Nothing in this section shall empower the ~~safety director~~ division to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that for those

employments or places of employment for which no code has been adopted and where it is found by the ~~safety director~~ division that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the ~~workmen~~ workers there employed, the ~~safety director~~ division may order that portion of the plant, installation or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed four (4) hours unless such period be extended by order of the ~~board~~ division."

Section 10. Section 41-1721, R.C.M. 1947, is amended to read as follows:

"41-1721. Judicial review of ~~board's~~ divisions orders, rules or decisions. (1) The orders of the ~~board~~ division, its rules, findings and decisions, made and entered under the provisions of this act, may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within thirty (30) days after an application for rehearing is denied, or, if the application is granted, within thirty (30) days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order, or decision, or the order

or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the ~~board~~ division and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney and a copy thereof shall be served by certified mail upon the ~~board~~ division. Within ten (10) days after the receipt of the notice, the ~~board~~ division shall file with the clerk of court the record of proceedings before the ~~board~~ division, including a transcript of all the evidence adduced upon the hearing and any rehearing before the ~~board~~ division. The district court, on application for good cause shown, may extend the time within which the ~~board~~ division shall file the record, transcript and evidence. The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the ~~board~~ division.

(4) The appeal shall not be extended further than to determine whether or not:

(a) The ~~board~~ division acted without or in excess of its powers, or in violation of the law;

(b) The order or decision was procured by fraud;

(c) The order, decision or rule is unreasonable;

(d) If findings of fact are made, the finding of fact supports the order or decision under review.

(5) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases."

Section 11. Section 41-1722, M.C.M. 1947, is amended to read as follows:

"41-1722. Application for rehearing of order, decision, or rule of ~~board~~ division. any party aggrieved directly or indirectly by any final order, decision or rule of the ~~board~~ division made or entered pursuant to this act may apply to the ~~board~~ division within twenty (20) days after the order of the ~~board~~ division for rehearing in respect to any matters determined or covered by such final order, decision or rule, and specified in the application, for hearing within the time and in the manner prescribed in this act."

Section 12. Section 41-1723, M.C.M. 1947, is amended to read as follows:

"41-1723. Application for rehearing — contents — waiver — copies to adverse parties — procedure where no adverse parties. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which

the applicant considers the final order, decision or rule is unjust or unlawful, and every issue to be considered by the ~~board~~ division.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within ten (10) days after being served.

(4) If there are no adverse parties, the application may be heard ex parte, or the ~~board~~ division may require the application for rehearing to be served on such parties as may be designated by the ~~board~~ division."

Section 13. Section 41-1724, M.C.M. 1947, is amended to read as follows:

"41-1724. Resolution of issues on rehearing — notice — disposition. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the ~~board~~ division, it may determine the same by confirming, without hearing, its previous determination, or if a rehearing is necessary to determine one or more of the issues raised, the ~~board~~ division shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties and such other persons as the ~~board~~ division may order.

(3) If after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the ~~board~~ division shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted, or should be changed, the ~~board~~ division shall abrogate, change or modify the same.

(4) An order or decision made after the rehearing, abrogating, changing or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the ~~board~~ division.

(5) An application for rehearing is considered denied by the ~~board~~ division unless it has been acted upon within thirty (30) days from the date of filing; provided that the ~~board~~ division may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional thirty (30) days."

Section 14. Section 41-1725, R.C.M. 1947, is amended

to read as follows:

"41-1725. Periodic inspections of hazardous places of employment -- report. (1) The ~~board~~ division shall inspect from time to time all the places of employment defined in the Montana ~~Workmen's~~ Workers' Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the ~~board~~ division and a copy thereof given the employer. Such report shall not be open to public inspection, or made public except on order of the ~~board~~ division, or by the ~~board or a member of the board~~ division in the course of a hearing or in the course of a hearing or proceeding."

Section 15. Section 41-1726, R.C.M. 1947, is amended to read as follows:

"41-1726. ~~Workmen~~ Workers to notify employers of safety violations -- complaint to ~~board~~ division -- investigation. (1) A ~~workman~~ worker shall notify ~~his~~ the worker's employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the ~~workman~~ worker.

(2) If the employer fails to remedy the violation, the ~~workman~~ worker may complain in writing to the ~~board~~ division of the violation.

(3) Upon receiving the complaint the ~~board~~ division shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant."

Section 16. Section 41-1727, R.C.M. 1947, is amended to read as follows:

"41-1727. Code-making power. (1) ~~In addition to such other powers and duties as may be conferred upon it by law, the board shall have the power to promulgate~~ The division may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe. In the performance of its duties the ~~board~~ division may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees; and others to suggest safety codes or amendments thereto. All such safety codes and rules shall, when adopted, be not inconsistent with the then existing widely accepted codes of such engineering bodies as the American Society of Mechanical Engineers, the American Standards Association, the American Society of Safety Engineers, the United States of America Standards Institute, the National Fire Protection Association, and, in addition, agencies of the federal government with responsibilities for

administering worker safety programs, and other accepted codes. Any amendments made to such codes by the ~~board~~ division shall be such that when amended such code shall be consistent with the widely accepted safety codes as then existing. All codes and all amendments thereto and repeals thereof shall take effect thirty (30) days after certified copies thereof shall be filed in the office of the secretary of state.

(2) Every code adopted and every amendment or repeal thereof shall be published in such manner as the ~~board~~ division may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the ~~board~~ division under the provisions of this act, together with the dates of adoption thereof, shall be published from time to time."

Section 17. Section 41-1728, R.C.M. 1947, is amended to read as follows:

"41-1728. Variations. Any employer may consult with the ~~board~~ division for advice and assistance in complying with the provisions of this act or any codes adopted hereunder. In case of practical difficulties, the ~~board~~ division may grant variations from particular provisions of the code and permit the use of other or different devices or methods.~~; provided, however, that~~ However, such variations shall be granted only when it is clear that the reasonable

safety of the workers in ~~said~~ the plant or place of employment is not thereby endangered. In any case where the ~~board~~ division shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this act. A properly indexed record of all variations made shall be kept in the office of the ~~board~~ division and be open to public inspection."

Section 18. Section 41-1729, R.C.M. 1947, is amended to read as follows:

"41-1729. General research and review powers of ~~board~~ division -- power to appoint advisers. The ~~board~~ division may: (1) Develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases and related subjects through:

(a) Research, conferences, lectures and uses of public communications media,

(b) Collection and dissemination of accident statistics, and

(c) Development of staff competent in the review of safety codes.

(2) Appoint advisers who shall be compensated by the ~~board~~ division if necessary, and who shall assist the ~~board~~ division in establishing standards of safety. The ~~board~~ division may adopt and incorporate in its orders such safety

recommendations as it may receive from such advisers."

Section 19. Section 41-1733, R.C.M. 1947, is amended to read as follows:

"41-1733. Occupational health hazards. The ~~board~~ division shall report occupational health hazards discovered in its investigations and inspection of places of employment to the ~~state board of health~~ department of health and environmental sciences and shall co-operate with the ~~state board of health~~ department of health and environmental sciences in carrying out its duties as specified in Title 69, chapter 42, R.C.M. 1947."

Section 20. Section 50-101, R.C.M. 1947, is amended to read as follows:

"50-101. Inspectors of metal and nonmetallic mines -- employment. The ~~industrial accident board~~ division of workers' compensation shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this act and shall prescribe their powers, duties and responsibilities."

Section 21. Section 50-102, R.C.M. 1947, is amended to read as follows:

"50-102. Inspections and investigations -- access to mine -- order to close mine or abate violation -- notice -- hearing and review. (a) The ~~board~~ division is authorized at any time to cause to be made such inspections and

investigations as it shall deem necessary in surface and underground mines which are subject to this act (1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein, and (2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this act.

(b) For the purpose of making any inspection or investigation authorized by this act, authorized representatives of the ~~board~~ division shall have the right of entry to, upon, or through any mine which is subject to this act.

(c) If, upon any inspection of a mine which is subject to this act authorized representatives of the ~~board~~ division find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists, and thereupon issue an order requiring the operator of such mine to cause all persons, except the persons designated below, whose presence in such area is necessary to eliminate the danger

described in such order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary in the judgment of the operator of the mine, to eliminate the danger described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine, who is a person qualified to make mine examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(d) If, upon any such inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of such period of time as originally fixed or extended, the

authorized representative finds that such violation has not been totally abated, and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation; thereupon, the ~~board~~ division shall make an order requiring the operator of such mine to cause all persons in such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order, to be withdrawn from, and to be debarred from entering such area:

(1) Any person whose presence in such area is necessary, in the judgment of the operator of the mine, to abate the violation described in the order.

(2) Any public official whose official duties require him to enter such area.

(3) Any legal or technical consultant, or any representative of the employees of the mine who is a person qualified to make examinations, or is accompanied by such a person, and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

(e) Findings and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory

standard, and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(f) Each finding made and notice or order issued under this section shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing, and shall be signed by the person making them. A notice or order issued by an authorized representative pursuant to this section may be annulled, canceled, or revised by the authorized representative, and in case of a ~~board~~ division order, the ~~board~~ division may annul, cancel or revise the order.

(g) The order of the duly authorized representative of the ~~board~~ division shall remain in effect, but shall immediately be subject to review as provided in this act.

(h) An operator notified of an order made pursuant to section 50-102 (c) may apply to the ~~board~~ division for a hearing, revision, or annulment of such order. Whenever the ~~board~~ division after such a hearing upon complaint, or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but, if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings, revising or annulling

the order under review.

(i) An operator notified of an order made pursuant to section 50-102 (d) may apply to the ~~board~~ division for a hearing or revision of such order. If the ~~board~~ division finds that there was no violation, it shall make an order annulling the order under review. If the ~~board~~ division finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the ~~board~~ division finds that such violation was not totally abated, it shall make an order consistent with its findings.

(j) In view of the urgent need for prompt decisions of matters submitted to the ~~board~~ division under section 50-302, all actions which the ~~board~~ division or its authorized representatives are required to take under this section shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved."

Section 22. Section 50-108, R.C.M. 1947, is amended to read as follows:

"50-108. To what mines act is applicable. This act shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees,

agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the ~~board~~ division, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of ~~men~~ persons employed."

Section 23. Section 50-118, R.C.M. 1947, is amended to read as follows:

"50-118. Violation of the act — penalties. (a) Whenever an operator (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the ~~board~~ division or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the ~~board~~ division to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the ~~board~~ division any information or report requested by the ~~board~~ division and which may reasonably be necessary to carry out the provisions of this act, a civil action for preventive relief, including, but not limited to, an application for a permanent or temporary injunction,

restraining order, or other order, may be instituted by the ~~board~~ division in the district court for the county in which the mine in question is located or in which the mine operator has its principal office.

(b) Any person who knowingly (1) violates or fails or refuses to comply with any order, rule, or regulation issued under this act, or (2) interferes with, hinders, or delays the ~~board~~ division or its authorized representatives in carrying out any duties under this act, or (3) refuses to admit an authorized representative of the ~~board~~ division to any mine which is subject to this act, or (4) refuses to permit the inspection or investigation of any mine which is subject to this act, or of an accident, injury, or occupational disease occurring in or connected with such a mine, or (5) refuses to furnish the ~~board~~ division any information or report requested by the ~~board~~ division and which may reasonably be necessary to carry out the provisions of this act, shall be guilty of a misdemeanor, and shall upon conviction thereof be punished for each such offense by a fine of not less than one hundred dollars ($100), or more than three thousand dollars ($3,000), or by imprisonment in the county jail not exceeding six (6) months, or both. In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits

such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both."

Section 24. Section 50-119, R.C.M. 1947, is amended to read as follows:

"50-119. Definitions. "Authorized representative" means mine inspector or any other person employed or authorized by the ~~industrial accident board~~ division to perform any and all duties under this act. ~~"Board"~~ "Division" means the ~~industrial accident board~~ division of workers' compensation of the state of Montana. "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties including the capacity of succession. "Employee" means every person in this state, including a contractor other than an "independent contractor," who is in the service of an employer as hereinafter defined in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise. "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or

implied, oral or written. "Inspector" means a person or persons employed by the ~~industrial accident board~~ division to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this act. "Mine" means any mine (or excavation) when clay, metallic ore, mineral, gypsum, or rock is dug or mined whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground. "Notice" means a written notice, work order or correction notice issued by an authorized representative of the ~~board~~ division, which notice specifies a violation(s) and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation(s). "Occupational Health" means any of those health conditions that occur as a result of employment in a mine. "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the ~~board~~ division, or any other determination or decision made by the ~~board~~ division."

Section 25. Section 69-1501, R.C.M. 1947, is amended to read as follows:

"69-1501. ~~Advisory committee -- functions -- appointment and terms of members -- traveling expenses --~~ boiler rules and regulations -- state inspectors or boilers, appointment, term and compensation -- special boiler

inspectors. ~~(1) There is hereby created to advise the industrial accident board an advisory committee which shall hereafter be referred to as the committee, consisting of three (3) members who shall be appointed by the governor, one for two (2) years, one for three (3) years and one for four (4) years. At the expiration of their respective terms or when vacancies occur they or their successors identified with the same interest respectively shall be appointed by the governor for terms of four (4) years each. Of these appointed members one (1) shall be a Montana first class steam licensed operating engineer of boilers employed in that capacity at the time of his appointment, one (1) shall be commissioned by the national board of boilers and pressure vessels inspectors and shall represent the boiler insurance companies licensed to do business in the state, and one (1) shall be a Montana registered professional mechanical engineer. The committee shall elect one (1) of its members as chairman and shall meet whenever required.~~

~~The members of the committee shall serve without salary but shall receive actual travel expenses in the same manner as other state officers.~~

~~The committee shall act in a technical advisory capacity to the industrial accident board and~~ (1) The division of workers' compensation shall formulate definitions, rules and regulations for the safe

construction, installation, operation, inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The ~~industrial accident board~~ division shall appoint state inspectors of boilers and shall prescribe their duties, term of office and fix their compensation.

(3) In addition to the state boiler inspectors the ~~industrial accident board~~ division shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and shall accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors."

Section 26. Section 69-1503, R.C.M. 1947, is amended to read as follows:

"69-1503. Inspection of boilers — boiler

installations. (1) The inspector of boilers must inspect all boilers and steam generators before the same are used, and all persons who bring into this state, for operation in this state, any boiler or boilers must notify the ~~board~~ division stating the number and kind of boilers, and where they are to be located and operated in this state, and must secure from the ~~board~~ division a certificate of inspection before ~~said~~ boilers are placed in operation, except in the case of new boilers, which must be inspected within ninety (90) days after they are put in use, and all boilers must be inspected at least once in every year, except boilers exempt under provisions of section 69-1515. Upon written application, longer inspection intervals may be authorized by the ~~board~~ division. Any owner, operator or user who opens a boiler or boilers between inspections for repair or other reasons must notify the ~~board~~ division of such action and such boiler or boilers shall at the discretion of the ~~board~~ division be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation. Any person failing to give notice to the ~~board~~ division as herein provided, or who operates such boilers without a certificate from the ~~board~~ division, shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) for each offense, or by imprisonment in the county jail for not less than thirty

(30) nor more than ninety (90) days, or by both such fine and imprisonment.

(2) When necessary, the boiler inspector shall subject boilers, except those exempted by 69-1515, to hydrostatic pressure, which hydrostatic pressure shall not exceed one hundred fifty per cent (150%) of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure. And the inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least two (2) inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby, and that such boilers and the steam connections may be safely employed without danger to life.

(3) New boiler installations. No boiler which does not conform to the rules ~~and regulations formulated~~ adopted by the ~~committee~~ division governing new construction and installation shall be installed and operated in this state after twelve (12) months from the date upon which the first

rules ~~and regulations~~ under this act pertaining to new construction and installation shall have become effective, unless the boiler is of special design or construction, and is not covered by the rules ~~and regulations~~, nor is in any way inconsistent with such rules ~~and regulations~~, in which case a special installation and operating permit may at its discretion be granted by the ~~committee~~ division."

Section 27. Section 69-1507, R.C.M. 1947, is amended to read as follows:

"69-1507. Duty of owner to permit inspection — ~~board~~ division action — costs and expenses. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same. In case the owner, operators, or manager of any boiler is notified by the inspector to have ~~said~~ the boiler ready for inspection on a certain day, and fails to have such boiler ready for inspection at such time, the inspector shall notify the ~~board~~ division to gain access to ~~said~~ the boiler. Any person failing to immediately comply with ~~board~~ division directed access to ~~said~~ the boiler shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than two months nor more than six months, or by both such fine and imprisonment. The owner, engineer or

manager of any boiler who has refused access resulting in a ~~board~~ division order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order, in addition to the inspection fee provided by law. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same, and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended."

Section 28. Section 69-1509, R.C.M. 1947, is amended to read as follows:

"69-1509. Classification and licensing of engineers. (1) Engineers entrusted with the operation, care and management of steam or water boilers and steam machinery as specified in the preceding section must be divided into four classes, namely, first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery shall be divided into four classifications in accordance with the following:

(a) First-class engineers shall be licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam driven machinery with the exception of

traction and hoisting engines.

(b) Second-class engineers shall be licensed to operate steam boilers operating not in excess of two hundred fifty (250) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of three hundred seventy-five (375) pounds per square inch gauge pressure and four hundred fifty degrees Fahrenheit (450°F) temperature, and steam driven machinery not to exceed one hundred (100) horsepower per unit with the exception of traction and hoisting engines.

(c) Third-class engineers shall be licensed to operate steam boilers operating not in excess of one hundred (100) pounds per square inch gauge saturated steam pressure or water boilers operating not in excess of one hundred sixty (160) pounds per square inch gauge pressure and three hundred fifty degrees Fahrenheit (350°F) temperature.

(d) Low-pressure engineers shall be licensed to operate steam boilers operating not in excess of fifteen (15) pounds per square inch gauge pressure or water boilers operating not in excess of fifty (50) pounds per square inch gauge pressure and two hundred fifty degrees Fahrenheit (250°F) temperature.

(3) Each applicant for an engineer's license shall meet the following minimum requirements for the class of engineer's license for which application is being made. Each

applicant for any classification must be physically and mentally capable of performing the required duties for the class of engineer's license for which application is being made.

(a) Applicants for low-pressure engineer's license shall have no less than three (3) months' full-time experience in the actual operation of a boiler in this classification and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a low-pressure engineer's license.

(b) Applicants for third-class engineer's license shall have no less than six (6) months' full-time experience in the actual operation of a boiler in this classification, under an engineer holding a valid third-class or higher license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers in this classification shall be granted a third-class engineer's license.

(c) Applicants for second-class engineer's license shall have:

(1) No less than two (2) years' full-time experience in the actual operation of a boiler and steam driven

machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license; or

(2) Hold a valid third-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid second-class or first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a second-class engineer's license.

(d) Applicants for first-class engineer's license shall have:

(1) No less than three (3) years' full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent

to operate a boiler or boilers and steam driven machinery in this classification, shall be granted a first-class engineer's license; or

(2) Hold a valid second-class engineer's license and have no less than one (1) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license; or,

(3) Hold a valid third-class engineer's license and have no less than two (2) year's full-time experience in the actual operation of a boiler and steam driven machinery in this classification, under an engineer holding a valid first-class license, and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a boiler or boilers and steam driven machinery in this classification shall be granted a first-class engineer's license.

(e) Allowable exceptions or variances to the foregoing minimum requirements are as follows:

(1) Applicants for engineer's license in any classification holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the ~~board~~ division and is found to be competent to operate a boiler or boilers and steam driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification satisfactory to the ~~board~~ division, accumulated in United States military services or the merchant marine service may be accepted in lieu of the operating experience required for licensing of engineers in each of the foregoing classifications.

(3) Applicants with training in the actual operation of steam or water boilers and steam machinery who have been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other ~~board~~ division approved institution or training program in the classification for which he is applying may at the discretion of the ~~board~~ division be credited with a maximum of six (6) months' experience toward first, second, or third-class engineer's license.

(4) None of the licenses in this section above named shall entitle the holder thereof to operate a traction engine, but all persons who are entrusted with the care and management of traction engines, or boilers on wheels, are required to pass an examination as to their competency to operate such class of machinery and to procure a license to be known as a traction license. Such traction license shall not entitle the holder thereof to operate any other class of steam machinery specified in the preceding section. Applicants for a traction engineer's license shall have no less than six (6) months' full-time experience in the operation of steam traction engines and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate a traction engine shall be granted a traction engineer's license. The ~~board~~ division at its discretion may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment."

Section 29. Section 69-1510, R.C.M. 1947, is amended to read as follows:

"69-1510. Complaints and revocation of license. Whenever complaint is made against an engineer holding a license that he through negligence, want of skill, or

inattention to duty, permitted his boiler(s) to burn or otherwise become in bad condition, or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the ~~board~~ division to make a thorough investigation of the charge, and upon satisfactory proof of such charge to revoke the license of ~~said~~ the engineer."

Section 30. Section 69-1512, R.C.M. 1947, is amended to read as follows:

"69-1512. Fees for inspection or examination. (1) All fees for inspection are to be paid to the ~~industrial accident board~~ division in accordance with the following schedule based on safety valve setting:

(a) Boilers with pressure under thirty (30) pounds per square inch $10

(b) Boilers with pressure from thirty (30) pounds to one hundred (100) pounds per square inch $15

(c) Boilers with pressure from one hundred (100) pounds to three hundred (300) pounds per square inch $20

(d) Boilers with pressure over three hundred (300) pounds per square inch $30

(e) Miniature boilers with pressure not in excess of one hundred (100) pounds per square inch $10

(f) Steam traction $ 5

(g) Operating certificate $ 4

In case of the failure of the owner, manager or person

in charge of any boiler to pay such fee to the ~~industrial accident board~~ division, the ~~board~~ division shall initiate the necessary legal action to collect ~~said~~ the fee. Failure of any person to immediately abide with results of such ~~board~~ division action shall be deemed guilty of a misdemeanor and punished as provided by section 69-1507.

(2) Whenever, upon request of the owner or operator of any boiler it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law, in addition to the fees herein prescribed, shall be charged and collected by the ~~industrial accident board~~ division.

(3) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(a)	First class	$30
(b)	Second class	$20
(c)	Third class	$12
(d)	Low pressure	$ 8
(e)	Traction	$12
(f)	Renewal of license	$ 4
(g)	Replacement of lost certificate	$ 2

(4) Each application shall be accompanied by a payment equal to fifty per cent (50%) of the license fee for which application is being made; said payment shall be forfeited

in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

In case of the failure of any applicant to successfully pass an examination, forty-five (45) days must elapse before he can again be examined for license."

Section 31. Section 69-1513, R.C.M. 1947, is amended to read as follows:

"69-1513. Review of license rejection. If any person who has applied for a license under the provisions of this article, and has been rejected, feels aggrieved, he may at any time after the lapse of ten days, and within forty-five (45) days after the date of his rejection, in writing set forth the causes of his grievance and request a ~~board~~ division review. Such request must be addressed to the ~~board~~ division and shall be signed by the rejected applicant. Within two days after receiving such request, ~~it is the duty of the board to~~ the division shall notify the applicant in writing that on a certain day, which shall not be less than five nor more than thirty (30) days after the date the ~~board~~ division receives ~~said~~ the written request, the ~~committee~~ division shall review and evaluate the application. The applicant may appear in person at ~~said~~ the review if he so desires. At least two days before the day set for the review the applicant may designate in writing to the ~~board~~ division

the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review."

Section 32. Section 69-1514, R.C.M. 1947, is amended to read as follows:

"69-1514. ~~board~~ Division decision. After ~~said~~ the review is completed, ~~and~~ if ~~a majority of~~ the ~~committee~~ division decides that ~~such~~ the applicant is entitled to the license he has applied for, the ~~board~~ division shall without delay issue a license accordingly, but if ~~a majority of~~ the ~~committee~~ division rejects the applicant, it is a final rejection, and he must not be granted another examination for the space of forty-five (45) days after such last rejection, when he may again apply as provided by section 69-1512."

Section 33. Section 69-1515, R.C.M. 1947, is amended to read as follows:

"69-1515. Boilers exempted from provisions — duty of owner of traction engine — notice of purchase of boiler. (1) This act shall not apply to boilers under federal control. The provisions of this act requiring inspections, inspection fees and certificates shall not apply to steam heating boilers operated at not over fifteen (15) pounds per square inch gauge pressure in private residences or

apartments of six (6) or less families or to hot water heating or supply boilers operated at not over fifty (50) pounds per square inch gauge pressure and temperatures not over two hundred fifty degrees Fahrenheit (250° F) when in private residences or apartments of six (6) or less families. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads, or any similar work where such locomotives are owned, leased or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation, and not for general commercial purposes, shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses. No persons operating any of the engines or boilers hereinbefore exempted from the operation of this article shall be required to procure license from the ~~board~~ division.

(2) Any person purchasing any boiler whether traction or stationary shall be entitled to receive from the seller the certificates of inspection issued on such boiler and any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of this section, shall, within ten (10) days after such purchase, report the fact of such purchase to the ~~board~~ division and shall notify

the ~~board~~ division as to where ~~said~~ the boiler will be installed and operated. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor. All other boilers and steam engines, except as herein exempted, come under the provisions of this article and persons operating same are required to hold the proper grade of license."

Section 34. Section 69-1517, R.C.M. 1947, is amended to read as follows:

"69-1517. Operation of boiler or steam engine without license. It is unlawful for any person in this state to operate a stationary boiler or steam engine, or any boiler or steam engine other than engines and boilers exempted by the provisions of section 69-1515, without a license granted under the provisions of this article. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section. But in case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may, for fifteen days employ any person of the age of eighteen years or over whom he may consider competent to run the engine or boiler, although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the ~~board~~ division. The person so employing

the unlicensed engineer shall immediately notify the ~~board~~ division. But no owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than fifteen days in any one calendar year. And it shall be unlawful, except as stated in this section, for any person, firm, or corporation to employ any person not duly licensed as an engineer, within the meaning of this act, to run or operate any of the boilers or engines subject to the provisions of this act."

Section 35. Section 69-1601, R.C.M. 1947, is amended to read as follows:

"69-1601. Operators of hoisting engines must procure licenses. (1) It shall be unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel in industrial operations or on construction projects, or any air compressor operated by any power without first obtaining a license therefor from the ~~board~~ division as herein provided. Except that in emergencies the provisions of section 69-1517 relating to the employment of unlicensed engineers shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel in industrial operations or on construction

projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of one hundred (100) brake horsepower used in the lowering or hoisting of personnel in industrial operations or on construction projects."

Section 36. Section 69-1602, M.C.M. 1947, is amended to read as follows:

"69-1602. Application and fee for license -- renewal and revocation of license. Application for such licenses shall be made to the ~~board~~ division in the same manner, and the same fee shall be charged therefor as now required by law for obtaining a license to operate steam engines and boilers, and such license shall be given for a period of one year from the date of issuance thereof, and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines or boilers; provided, that the ~~board~~ division shall have the right to revoke any license issued under the provisions of this act for any of the reasons for which the ~~board~~ division could revoke a license to operate steam engines and boilers."

Section 37. Section 69-1604, M.C.M. 1947, is amended to read as follows:

"69-1604. First and second-class licenses -- qualifications of applicant. (1) Each applicant for a

hoisting engineer's license shall meet the following minimum requirements for the class of license for which application is being made. Each applicant for any classification must be physically and mentally capable of performing the required duties for the class of license for which application is being made.

(a) Applicants for second-class hoisting engineer's license shall have no less than two years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid second-class or first-class license and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a second-class hoisting engineer's license.

(b) Applicants for first-class hoisting engineer's license shall:

(1) have no less than three years' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be

granted a first-class hoisting engineer's license; or

(2) Hold a valid second-class license and have no less than six (6) months' experience in the actual operation of hoisting equipment in this classification under an engineer holding a valid first-class license and successfully pass a written examination prescribed by the ~~board~~ division and has passed his eighteenth (18th) birthday and is found to be competent to operate hoisting equipment in this classification shall be granted a first-class hoisting engineer's license.

(c) Applicants for first or second-class hoisting engineer's license holding a valid license in that classification from another state with licensing requirements equal to or exceeding the foregoing minimum requirements for the state of Montana and successfully pass a written examination prescribed by the ~~board~~ division and is found to be competent to operate hoisting machinery in that classification shall be granted a license in that classification.

(d) Applicants for first or second-class hoisting engineer's license holding a valid first or second-class engineer's license for the operation of boilers, steam machinery and hoisting engines for the state of Montana prior to enactment of this act shall, upon application during a period not to exceed twelve (12) months after

enactment of this act, be granted a hoisting engineer's license in that classification."

Section 38. Section 71-1001, R.C.M. 1947, is amended to read as follows:

"71-1001. Definitions. (a) "Payments" means money payments to persons having silicosis as herein defined.

(b) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

(c) "Examining board" shall mean well-qualified physician or physicians, as designated by the ~~industrial accident board~~ division of workers' compensation."

Section 39. Section 71-1002, R.C.M. 1947, is amended to read as follows:

"71-1002. Administration. ~~(a) The industrial accident board of the state of Montana is hereby authorized and charged with the general supervision of this chapter under the powers, duties and functions as prescribed herein as amended.~~The division of workers' compensation shall administer this chapter. The division shall:

~~All powers, duties and functions previously vested in the state department of public welfare in relation to this chapter are hereby transferred to the industrial accident board of the state of Montana.~~

~~(b) Any powers, duties or functions previously vested in the county departments of public welfare in relation to~~

~~this chapter are hereby transferred to the industrial accident board of the state of Montana.~~

~~(c)~~ (1) ~~The industrial accident board of the state of Montana shall formulate~~ Formulate a plan and ~~promulgate regulations~~ adopt rules for the operation of this chapter.

~~(f)~~ (2) ~~The industrial accident board shall co-operate~~ Cooperate with the federal government in all matters or immediate concern pertaining to silicosis.

~~(g)~~ (3) ~~The industrial accident board shall publish~~ Publish an annual report and interim reports as may be necessary or required or asked for by the governor.

~~(i)~~ (4) ~~The industrial accident board shall designate~~ Designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant.

~~(j)~~ (5) ~~The industrial accident board shall designate~~ Designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter.

~~(k)~~ (6) ~~The industrial accident board shall pay~~ Pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from fund appropriated to the ~~board~~ division for that purpose.

~~(l)~~ (7) ~~The industrial accident board shall develop~~ Develop and co-operate with other agencies in developing

measures for the prevention of silicosis."

Section 40. Section 71-1005, R.C.M. 1947, is amended to read as follows:

"71-1005. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the ~~industrial accident board~~ division. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the ~~industrial accident board~~ division. The application form may be filled in and written by a person authorized by the ~~industrial accident board~~ division. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used."

Section 41. Section 71-1006, R.C.M. 1947, is amended to read as follows:

"71-1006. Investigation of applications. Whenever the ~~industrial accident board~~ division under this chapter receives an application for a payment an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provision of this chapter, and such other information as may be required by the rules of the ~~industrial accident board~~ division. The investigation of such applicant shall be conducted by representatives of the ~~industrial accident~~

~~board~~ division. The physicians or physician designated by the ~~industrial accident board~~ division as herein provided shall constitute an examining board for such clinical, pathological, X-ray and Roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report."

Section 42. Section 71-1007, R.C.M. 1947, is amended to read as follows:

"71-1007. Making payments. Upon the completion of such investigation the ~~industrial accident board~~ division shall determine whether or not the applicant is entitled to a payment under this chapter. The ~~board~~ division shall then notify the applicant of its decision."

Section 43. Section 92-1302, R.C.M. 1947, is amended to read as follows:

"92-1302. Administration of act. This act shall be administered by the ~~industrial accident board of the state of Montana~~ division of workers' compensation. ~~The members of the industrial accident board shall receive no additional compensation for administering this act. The actual and necessary traveling expenses of the members of the board while on business of administering this act shall be paid~~

~~from the occupational disease compensation account in the agency fund.~~

Section 44. Section 92-1303, R.C.M. 1947, is amended to read as follows:

"92-1303. Definitions. Except as in this section and elsewhere in this act expressly set forth, the definitions contained in the ~~workmen's~~ workers' Compensation Act shall apply to terms and words herein contained.

~~1.~~ (1) "Weekly wage" means the average of the weekly earnings of the employee in the employ of his employer against whom compensation is awarded during the period of one year prior to the termination of his employment with such employer, or during such lesser period in such year as ~~he~~ the employee has been in the employ of his employer. In case the employee is absent from employment during the period as a result of the occupational disease for which compensation is claimed, then the week or weeks in which the absence occurs shall not be included in the computation of the average weekly wage. If the period provided in this section for computation of the average weekly wage does not include four weeks, then the average weekly wage shall be such as, having regard to the previous wage of the employee, or of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, reasonably represents the weekly

earning capacity of the disabled employee in the employment in which he is working at the time of his disablement.

~~2.~~ (2) "Award" means the finding or decision of the ~~board~~ division as to the amount of compensation due any disabled employee or the dependents of any deceased employee.

~~3.~~ (3) ~~"Board" means the industrial accident board of the state of Montana~~ "Division" or board means the division of workers' compensation provided for in section 82A-1004.

~~4.~~ (4) "Compensation" means the payments and benefits provided in this act.

~~5.~~ (5) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from performing any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability." Provided that in the event of death or disability due to pneumoconiosis the following shall apply:

~~a.~~ (a) If a miner who is suffering or has suffered from pneumoconiosis was employed for ten (10) years or more in one (1) or more coal mines there shall be a rebuttable

presumption that his pneumoconiosis arose out of such employment.

~~b.~~ (b) If a deceased miner was employed for ten (10) years or more in one (1) or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis.

~~c.~~ (c) If a miner is suffering or suffered from a chronic dust disease of the lung which (1) when diagnosed by chest roentgenogram yields one (1) or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization, (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (3) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in clause (1) or (2) if diagnosis had been made in the manner prescribed in clause (1) or (2) then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

~~6.~~ (6) The terms "employee," "workman," and "operative," as used herein, shall mean:

Every person in the service of the state, and of a county, city, town, municipal corporation, or school

district, including the regular members of lawfully constituted police and fire departments of cities and towns.

Every person in the service of any employer subject to this act as hereinafter defined or to whom such employer is required to secure compensation under this act, including aliens and minors legally or illegally permitted to work for hire, but not including a person whose employment is casual and is not in the usual course of trade, business, or occupation of the employer, and not including agricultural workers and domestic servants unless the employer shall so elect.

~~7.~~ (7) "Beneficiary" means and shall include a surviving wife or husband and a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years, or if no surviving wife or husband then a surviving child or children under the age of eighteen (18) years and an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of disablement.

~~8.~~ (8) "Major dependent" means if there be no beneficiary as defined in a preceding section, the father or mother, or the survivor of them, if actually dependent upon

the decedent at the time of his disablement, then to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

~~9.~~ (9) "Minor dependent" means if there be no beneficiary or major dependent as defined in the preceding section the brothers and sisters under the age of eighteen years, provided, however, that no invalid brother or invalid sister over the age of eighteen years shall be a "minor dependent" unless actually dependent upon the decedent at the time of ~~his~~ the decedent's disablement. Minor dependents shall be awarded compensations to the extent of such dependency, not to exceed, however, the maximum compensation provided for in this act.

~~10.~~ (10) "Invalid" means one who is physically or mentally incapacitated.

~~11.~~ (11) "Child" shall include a posthumous child, a stepchild, a child legally adopted prior to the disablement, an illegitimate child legitimized prior to the disablement.

~~12.~~ (12) "Week" means six (6) working days, but includes Sundays.

~~13.~~ (13) "Wages" means the average daily wages received by the employee at the time of the disablement for the usual hours of employment in a day, and overtime is not to be considered.

~~14.~~ (14) "Wife" or "widow" means only a wife or widow

living with, or legally entitled to be supported by the deceased at the time of the disablement.

~~15.~~ (15) "Husband" or "widower" means only a husband or widower incapable of supporting himself, and living with, or legally entitled to be supported by the deceased at the time of her disablement.

~~16. "Commissioner" means one (1) of the members of the industrial accident board.~~

~~17. "Appointed member of the board" means that member of the industrial accident board appointed by the governor.~~

~~18.~~ (16) "Order" shall mean and include any decision, rule, regulation, direction, requirement, or standard of the ~~board~~ division, or any other determination arrived at or decision made by such ~~board~~ division, excepting general or local orders as herein specified.

~~19.~~ (17) "Payroll," "annual payroll" or "annual payroll for the preceding year," means the average annual payroll of the employer for the preceding calendar year, or, if the employer shall not have operated a sufficient or any length of time during such calendar year, twelve (12) times the average monthly payroll for the current year; provided, that an estimate may be made by the ~~board~~ division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the ~~board~~ division, as

the case may actually be on December 31st of such current year.

~~20.~~ (18) "Year," unless otherwise specified, means calendar year. "Fiscal year" means the period of time between the first day of July and the thirtieth (30th) day of the succeeding June.

~~21.~~ (19) "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act.

~~22.~~ (20) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

~~23.~~ (21) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice ~~his profession~~ in this state.

~~24. Wherever the singular is used the plural shall be included, and wherever the plural is used the singular shall be included.~~

~~25. Wherever the masculine gender is used, the feminine and neuter shall be included.~~

~~26.~~ (22) For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO2) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic

X-ray pattern, and by variable clinical manifestations.

~~3.~~ (23) For the purpose of this act "pneumoconiosis" is defined as a chronic dust disease of the lung arising out of employment in coal mines, and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

~~27.~~ (24) "Workshift" means the work for which an employee is paid a day's wages."

~~28. "Workmen's Compensation Act" means the Workmen's Compensation Act of the State of Montana.~~

-End-